

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No.613 of 2003 (O&M)

Date of decision: 30th May, 2022

Ranjit Kaur & others

... Appellants

Versus

Rajiv Malik & others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. A.S. Pannu, Advocate for
Mr. Vikas Singh, Advocate for the appellants.
Mr. Vinod Khatri, Advocate for respondent No.1.
None for respondents No.3, 4 and 6.

FATEH DEEP SINGH, J.

This appeal by claimants seeks to set aside an Award dated 12.11.2002 passed by the Court of learned Motor Accident Claims Tribunal, Faridkot. Since the records of the case stood destroyed in fire that engulfed the record room of this Court and thus, with this handicap the present matter is being disposed off based on the remnants available before this Court.

Heard Mr. A.S. Pannu, Advocate representing Mr. Vikas Singh, Advocate for the appellants; Mr. Vinod Khatri, Advocate for respondent No.1 and perused the records of the case.

The accident took place on 07.08.1998 when truck bearing registration No.RJ-31-G-0739 was being driven by Balwinder Singh

alias Bhagat Singh and while in the area of Panj Grain Kalan, two trucks bearing registration No.PIP-5279 and No.UP-85-B-9728 came from the opposite side together being driven rashly and negligently at a high speed and in spite of the best efforts of the deceased Balwinder Singh @ Bhagat Singh the offending trucks hit his vehicle resulting in death of the deceased. Harjinder Singh respondent No.2 was driving truck bearing No. PIP-5279 whereas truck bearing No. UP-85-B-9728 was being driven by Surinder Singh (latter also died in this accident). FIR bearing No.45 dated 08.08.1998 under Sections 279, 337, 338 and 304-A IPC was registered against deceased Balwinder Singh whose family comprising of Ranjit Kaur widow, minor son Manjinder Singh and minor daughter Manpreet Kaur have laid claim for compensation which they failed to secure as per their stand and hence the appeal in question.

The stand of the respondents No.1, 3, 4, 5 and 6 is over the non-maintainability of the claim petition, the accident being a result of rash and negligent driving by deceased Balwinder Singh of his vehicle for which he was arraigned as an accused in the criminal case, though accepted the fact that the vehicles in question bearing No. PIP-5279 and No. UP-85-B-9728 were duly owned and insured by the respective respondents.

The Tribunal framed the following issues:-

1. Whether Balwinder Singh died in an accident caused by Harjinder Singh, respondent No.2 and Surinder Singh (deceased) while driving trucks UP-85-B-9728 and PIP-5279 at a rash speed and in a negligent manner on 7.8.1998 at about 10.15 PM in the area of village Panj Grain Kalan? OPA
2. Whether the claimants are the legal heirs of the deceased and were dependant upon him? OPA
3. To what amount of compensation the claimants are entitled to and from whom? OPA
4. Whether the drivers of the offending vehicles were not holding valid driving licences at the time of alleged accident? If so its effect? OPR
5. Whether the claim petition is bad for non-joinder of necessary parties? OPR
6. Whether the claim petition is not maintainable in the present form? OPR
7. Whether the offending vehicles were not having valid registration route permit and fitness certification? If so, its effect ? OPR
8. Relief.

Testimony of AW1 Ranjit Kaur widow bears out that the deceased was driver on the truck in question and was getting ₹ 4,000/- per month as salary on which they all were dependent and testified age of the deceased to be 35 years. AW2 Balbir Singh Cleaner of truck bearing No. RJ-31-G-0739 has detailed the manner of the accident and had clearly enumerated that on account of fault of drivers of the two offending trucks bearing No. UP-85-B-9728 and PIP-5279 which came from the opposite side being driven rashly and negligently by Harjinder Singh and Surinder Singh deceased, the accident had happened on account of head-on-collision. He has categorically stated that in spite of the best efforts of deceased Balwinder Singh, he could not save his vehicle even after having taken the same on the extreme left hand side of the road.

Since the most rallying point is over the cause of this accident and responsibility to be assigned and the deposition of the complainant AW2 Balbir Singh Cleaner does not help the case of the respondents as has been sought to be argued by the counsel as he has clearly stated that while he was admitted in the hospital in an injured state, police has obtained his signatures on the blank papers and thus has backed out of the same. This witness as per the own admission of the respondent has not been declared hostile and cross-examined to elicit the truth. AW3 Jagdish Rai owner of the truck bearing No. RJ-31-G-0739 and proprietor of Jai Shri Ram Bus Service had categorically

stated that the deceased was driver on his truck and was getting ₹ 4,000/- per month as salary and has supported the case that complainant Balbir Singh and Gurtej Singh were the cleaners on the said truck and has also proved copy of the postmortem report Ex.A1. It is detailed by him that Gurtej Singh and Balbir Singh have left for abroad.

On the other hand, the respondents have examined RW1 Mandip Singh conductor of truck No.PIP-5279 which was owned by Rajiv Malik respondent and has detailed third vehicle bearing No. UP-85-B-9728 to be a tanker owned by Rajiv Malik and has tried to put the blame on the deceased driver of the truck bearing No. RJ-31-G-0739.

What one can decipher from the evidence of the two sides and the fact that there are three trucks on the road, is in itself a strong corroborative and supportive fact that all of them had come in the middle of the road leading to this accident and the claim that is sought to be raised on the basis of Awards passed in other claim petitions proved as Ex.R3 and Ex.R4 does not matter much when there is nothing by way of cross-examination put to the eye-witness to that effect to negate his version of the accident. Since proceedings under the Motor Vehicles Act, 1988 are summary in nature and therefore, stricter principles of Evidence Act are not to be applied. Merely because an FIR has been lodged by occupants of one of the trucks involved in the accident does not mean and can be construed to be a gospel truth. Moreover, mere registration of FIR does not pinpoint as to the rash and

negligent driving and what the Tribunal has to see is the evidence led before it independent of all this. Thus, from the limited documents available to this Court it can be safely concluded that the accident took place due to contributory negligence of drivers of all the three trucks bearing registration Nos. RJ-31-G-0739; PIP-5279 and UP-85-B-9728; and therefore the findings of learned Tribunal on issue No.1 are accordingly modified.

It is not displaced that the deceased Balwinder Singh @ Bhagat Singh was driver of truck No. RJ-31-G-0739 whose owner is respondent No.5 Jai Sri Ram Bus Service while truck No. PIP-5279 is owned by Rajiv Malik and the other truck bearing No.UP-85-B-9728 is owned by Harjinder Singh and all these vehicles were duly insured with respondent No.3, 4 and 6 which is one and the same company i.e. United India Insurance Co. Ltd. and which fact is well established on the record and policies were comprehensive in nature as is detailed by the Tribunal in the impugned Award. Keeping in view the very cause of this accident, the drivers, owners and insurer of all these three trucks are vicariously and equally liable to pay the compensation in case of deceased Balwinder Singh alias Bhagat Singh, and being a case of contributory negligence of three vehicles and their drivers, therefore each of the drivers, owners and insurer of all these three trucks shall be contributing $\frac{1}{3}^{\text{rd}}$ of the amount.

The quantum of compensation is an issue which is hotly debated by the two sides. Learned Tribunal has merely awarded ₹50,000/- under the head of 'no fault liability' which is too preposterous a proposition and needs to be given a thoughtful consideration. As has been the finding given above in the foregoing paragraphs, the deceased was admittedly earning ₹ 4,000/- per month which is the evidence and statement of his employer, the owner of the truck. Assuming that out of this amount the deceased must be spending ₹ 500/- per month on his own upkeep and maintenance and must be contributing ₹3,500/- per month towards the family comprising of a widow and two minor children and therefore, the annual dependency comes to ₹ 42,000/-. Keeping in view the age of the deceased to be 35 years, multiplier of 17 needs to be applied and the compensation amount comes to ₹7,14,000/- and keeping in mind the age of the deceased as well as relative ages of the dependents and the well enshrined law in '**Sarla Verma & others v. Delhi Transport Corporation & another**' reported in **2009(6) SCC 121**, 40% needs to be awarded towards the future prospects, which comes to ₹ 2,85,600/-. Besides this, the family must have spent money on last rites and ceremonies, the wife has lost her husband, minor children their father, a source of love, affection and protection, and the family needs to be adequately compensated under all these heads and for which a lump sum amount of ₹ 3,00,000/- is awarded. Therefore, the total amount of

compensation comes to ₹ 12,99,600/-. Keeping in view the fact that it is a case of contributory negligence, there being three vehicles involved in the accident, 1/3rd needs to be deducted towards percentage of attribution therefore, the claimants shall be entitled to get a total compensation of ₹ 8,66,400/- along with interest @ 9% p.a. from the date of filing of the claim petition till realization of the amount, and which amount of compensation shall be equally divided amongst the claimants. By now, the children must have attained majority and this Court does not feel it proper to deposit the amount of their shares by way of FDRs as it is the time when they are in most urgent need of money and to further in their lives. As has been discussed earlier, the drivers, owners and insurer of all these three trucks are vicariously and equally liable to pay the compensation. Compensation initially shall be paid by the insurance companies reserving their rights to recover if any.

The appeal stands disposed off in those terms.

(FATEH DEEP SINGH)
JUDGE

May 30, 2022

rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No